

40 KAR 2:340. Contact lens seller annual registration and verification requirements.

RELATES TO: KRS 367.680-367.690

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.688, 367.689

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.180 authorizes the Attorney General to promulgate administrative regulations which will facilitate performing the duties and exercising the authority vested in the Attorney General and the Department of Law by law. KRS 367.150(4) requires the Department of Law to study the operation of all laws, rules, administrative regulations, orders, and state policies affecting consumers and to promulgate administrative regulations in the consumers' interest. KRS 367.689 authorizes the Attorney General to promulgate administrative regulations to carry out the provisions of KRS 367.680 to 367.690, pertaining to the sale of contact lenses. KRS 367.688 requires the Attorney General to charge a fee for investigation and registration of nonresident dispensers of contact lenses. This administrative regulation establishes requirements for a mail order contact lens seller annual registration form required by KRS 367.687.

Section 1. Definitions. (1) "Applicant" means a person located outside Kentucky desiring to ship, mail, deliver, or sell contact lenses to a patient at a Kentucky address.

(2) "Date of authorization" means the date on which a contact lens prescription is completed, as referenced in KRS 367.685.

(3) "Dispensing facility" means the building or structure from which contact lens orders are shipped.

(4) "Response-time options" means requests for contact lens prescription verification in which the requestor expressly or implicitly states that the failure of the prescribing optometrist, osteopath, or physician to respond to the request within the time frame or in the manner stated in the request constitutes a verification of the prescription.

Section 2. Contact Lens Seller Annual Registration Form. The Contact Lens Seller Annual Registration Form, CLS-1, shall contain the following information:

(1) In accordance with KRS 367.687(1), a certification by the applicant that the applicant is licensed or registered to distribute contact lenses in the state in which the dispensing facility is located and from which the contact lenses are dispensed, including the date of licensure, the expiration date, if any, and the name and address of the licensing or registering agency.

(2) The business names, titles, and addresses required by KRS 367.687(2).

(3) A certification by the applicant containing the information required by KRS 367.687(3).

(4) If any owner, partner, corporate officer, or person responsible for overseeing the dispensing of contact lenses has been the subject of civil or criminal action by an agency in any state which regulates the sale or dispensing of contact lenses, this information shall be disclosed on the application.

(5) A certification by the applicant that they shall respond to all requests for information from the Attorney General in accordance with KRS 367.687(4).

(6) A certification by the applicant that they shall maintain records of contact lenses dispensed to residents of the Commonwealth of Kentucky in accordance with KRS 367.687(5).

(7) The toll-free telephone number and certification required by KRS 367.687(6).

(8) The toll-free telephone number required by KRS 367.687(7).

(9) A certification by the applicant that the notification required by KRS 367.687(8) will be sent to the patient whenever contact lenses are supplied.

(10) The certification required by KRS 367.687(9).

(11) An annual registration fee of \$300 enclosed with each registration in the form of a

check made payable to "Kentucky State Treasury".

(12) The signature of the applicant or a person authorized to sign on behalf of the applicant. The signature shall constitute a certification that the statements contained in the application are true and correct.

Section 3. The Attorney General may charge a fee for investigation of nonresident dispensers of contact lenses based on reasonable expenses incurred during the investigation process, in accordance with KRS 367.688.

Section 4. Response-time Options. (1) Response-time options are prohibited and shall not constitute verification of a contact lens prescription, in accordance with KRS 367.683(2)(f).

(2) A mail order contact lens seller shall verify a contact lens prescription through one of the methods provided in KRS 367.683(1).

Section 5. Providing and Verifying Prescriptions. (1) In compliance with KRS 367.685, upon completion of a contact lens fitting a patient shall be entitled to receive a complete copy of the contact lens prescription until its expiration date.

(2) In compliance with KRS 367.683, a patient's prescribing optometrist, osteopath or physician shall, through electronic or oral affirmative communication, verify a contact lens prescription submitted by a contact lens seller designated to act on behalf of that patient.

Section 6. Incorporation by Reference. (1) The "Contact Lens Seller Annual Registration Form", CLS-1, 2003, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 504; Am. 1203; eff. 12-5-2003.)